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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,954	01/18/2001	Kenneth James Barker	RAL 920000117 USI	6985

25299 7590 06/07/2004

IBM CORPORATION  
PO BOX 12195  
DEPT 9CCA, BLDG 002  
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER
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CANGIALOSI, SALVATORE A

ART UNIT	PAPER NUMBER
2661	6

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/764,954

Applicant(s)

BARKER ET AL.

Examiner

Salvatore Cangialosi

Art Unit

2661

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2.5</u>   | 6) <input type="checkbox"/> Other: _____                                    |

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1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 22 and 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Aimoto in view of Peltola et al (both cited by applicants).

Regarding claim 22, Aimoto (See Cols 7 and 8) disclose a switch with a communication status measurement circuit(element 106) which measures switch congestion which controls a cell discard judgment unit which determines whether to discard data substantially as claimed. It is noted that that a cell is the functional equivalent of a frame . The differences between the above and the claimed invention are the specific frame discard instead of cell discard. Peltola et al (See Fig. 6) shows explicit frame discarding. It would have been obvious to the person having ordinary skill in this art to provide a similar

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arrangement Aimoto because they are well known and conventional functional equivalents of frame discarding in the prior art.

Regarding claim 23, Aimoto (See Cols 7 and 8) disclose a switch with a communication status measurement circuit (element 106)

which measures switch congestion which controls a cell discard judgment unit which determines whether to discard data

substantially as claimed. It is noted that that a cell is the functional equivalent of a frame . The differences between the

above and the claimed invention are the specific frame discard instead of cell discard. Peltola et al (See Fig. 6) shows

explicit frame discarding. It would have been obvious to the person having ordinary skill in this art to provide a similar

arrangement Aimoto because they are well known and conventional functional equivalents of frame discarding in the prior art.

Any inquiry concerning this communication should be directed to Salvatore Cangialosi at telephone number (703) 305-1837. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms, can be reached at (703) 305-4703.

**Any response to this action should be mailed to:**

Commissioner of Patent and Trademarks

Washington, D.C. 20231

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or faxed to (703)872-9306

Hand delivered responses should be brought to Crystal Park  
II, 2121 Crystal Drive, Arlington, Virginia, Sixth  
Floor(Receptionist).

Any inquiry of a general nature or relating to the status of  
this application or proceeding should be directed to the  
Technology Center 2600 Customer Service Office whose telephone  
number is (703) 306-0377.

  
SALVATORE CANGIALOSI  
PRIMARY EXAMINER  
ART UNIT 222